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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re DESTINY C. et al., Persons Coming
Under the Juvenile Court Law.

B250700

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. Nos. CK94472 & CK94473)

Plaintiff and Respondent,

v.

JERRY C.,

Defendant and Appellant.

APPEAL from a judgment and an order of the Superior Court of Los Angeles County. Valerie L. Skeba, Referee. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant,
Appellant

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
Peter Ferrera, Deputy County Counsel, for Plaintiff, Respondent, and Cross-Appellant.

Jerry C. (Father) appeals from jurisdictional findings and a dispositional order removing his children, A.J. and Harmony, from his home. Father contends the evidence is insufficient to support the juvenile court's findings and orders. We affirm.

FACTS

Father has four children from three different relationships: 11-year-old Destiny with Christina H.; 9-year-old A.J. and 6-year-old Harmony with Amanda C.; and 4-year-old Skye with Taryn C. At the time of the proceedings, all four children lived with Father and Taryn.¹

The Section 300 Petition and Investigation

On October 8, 2012, the Los Angeles Department of Children and Family Services (DCFS) received a referral that Destiny admitted to the caller she was afraid Taryn would hurt her and her half-siblings, A.J. and Harmony, once her therapy ended. Destiny reported that seven months ago, Taryn had thrown Destiny to the floor and started choking her. Destiny had been hospitalized twice pursuant to Welfare and Institutions Code² section 5150, once in May 2012 and again in August 2012. Her psychiatrist believed that Destiny was responding to environmental stress. The caller then reported that Destiny was forced to sit in the timeout chair all night and A.J. was made to do military type exercises, such as push-ups and forward leaning rests until he fell. Harmony also appeared disheveled and said she did not remember the last time she took a shower. Harmony recalled she was not able to eat dinner the night before because she had done her homework incorrectly.

A section 300 petition was filed on December 27, 2012, alleging under subdivisions (a) and (b) that: "On prior occasions, the children [A.J. and Harmony's] father[']s female companion, Taryn [C.] physically abused the children striking the

¹ For ease of reference and with all due respect, we refer to the members of this family by their first names.

² All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

children with a belt and hands. On prior occasions in 2012, the female companion forced the children to do excessive exercise, causing the children pain. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The father knew of the female companion's physical abuse of the children and failed to protect the children by allowing the female companion to reside in the children's home and having unlimited access to the children. The physical abuse of the children by the female companion, and the father's failure to protect the children, endangers the children's physical health, safety and well-being, creates a detrimental home environment and places the children at risk of physical harm, damage, physical abuse, and failure to protect."³

The family declined voluntary family maintenance through their attorney, stating they were satisfied with the counseling and services currently provided to the children. DCFS interviewed the family's therapeutic behavior services (TBS) worker, Melishia Phillips, who provided services to the family at their home four to five days a week for at least three hours a day. Phillips reported she witnessed a heated argument between Taryn and Father when she arrived at their home the day before. During the argument, Taryn stated she hated Destiny and that looking at Destiny made her skin crawl. Taryn also stated that A.J. was following in Destiny's footsteps. At the end of the argument, Taryn left with Skye and told Father she did not want him or the children to be home when she returned. The TBS worker felt Destiny was treated like "Cinderella" and that she did too many chores in the home. Although the TBS worker felt there was little nurturing in the home, she never witnessed any physical abuse. She felt Skye was the favored child, who received presents and dessert more often than the other children. She believed Taryn was stressed because she is the sole income provider in the household.

In a later report, Phillips repeated her assessment to DCFS. She stated, "They are making a big difference between how they treat this 4 year [old] and the other children.

³ On the same day, a separate petition was filed under subdivisions (a), (b), and (c) alleging emotional and physical abuse of Destiny. Both petitions were adjudicated in the same contested hearing. The orders stemming from Destiny's petition have not been appealed. A third petition was filed as to Skye, but it was later dismissed.

She gets to get away with bad behavior while the other children are labeled as having mental health issues. This child is hyper too but she is not given boundaries and she uses her position. I observed how once she used the bathroom and yelled for Destiny to come and clean her. Destiny has to clean her after she uses [the] bathroom. Destiny will get in trouble for not taking care of her. She got in trouble once because she gave Skye and Harmony a bath and did not wash their hair correctly. She is a child.” She noted, “It was hard to have a session when she [Taryn] was home.”

DCFS also spoke with Destiny’s therapist, Katrina Ramos, who had been working with the family for 15 months. She reported Destiny told her Taryn stopped hitting her when she began to receive services. The therapist opined Taryn had unreasonable expectations of children, expecting them to wash dishes, fold clothes, and clean the house to her high standards. Taryn was also often verbally abusive to the children, calling Destiny a bad kid and predicting she would be pregnant at 15 years of age, just like her biological mother. When asked to say one nice thing to Destiny, Taryn responded that she could not think of anything good to say about Destiny. Harmony also appeared disheveled and did not appear to be bathed on a regular basis. The therapist reported Destiny was diagnosed with major depression, oppositional defiant disorder and psychiatric disorder, for which she was taking medication. Destiny was hospitalized in August and her hallucinations stopped once she began taking medication.

Later, Ramos stated she initially attributed Destiny’s issues to trauma suffered at the hands of her biological mother because the family appeared to be supportive and good. However, she gained Destiny’s confidence as she continued to work with her and Destiny eventually disclosed the trauma she was experiencing at Father and Taryn’s home. Ramos explained, “We provided TBS services due to constant hospitalizations. There was someone in the home 20 to 30 hours a week. Once that was in place we were able to see the big picture. Destiny never seemed to be getting better. It did not make sense until we were able to identify the family as a contributing factor. Finally, Destiny felt comfortable enough to say mother [Taryn] choked her out and made threats and that she was scared. This has been very frustrating. The client trusted us in confidence and

we said we would try and protect her but she is still in the situation.” Ramos further related how the children told her they were forced to do military style drills for punishment and were able to show her exactly how to do each exercise. A.J. also reported to Ramos that he was still made to continue with the exercises even if he was crying. Harmony told Ramos that “Mommy does not want me to call her mommy.”

An interview with Destiny was arranged on October 9, 2012, at her school. She complained that Skye was treated better than she was and she wished everyone in the home got along better. Although she denied any physical abuse, Destiny stated she or A.J. would be made to do push-ups, jumping jacks or mountain climbers as punishment. More often, however, they were made to sit in a corner in time-out. She also described how A.J. was told he was not sitting in timeout properly last week and Taryn made him do a leaning rest, which involved holding himself in the push up position. Taryn then threatened to make him hold a leg and an arm up in the air if he did not stop crying.

Father and Taryn denied any abuse, stating the children were put in time outs that corresponded to their age, one minute for each year. Further, he explained the children were treated differently because of their ages and abilities, not due to favoritism. He also stated that Destiny had previously admitted to making false allegations in order to extend TBS services. Taryn believed Destiny was suffering from post traumatic stress disorder due to her experiences with her biological mother, including being hit with a belt. Taryn believed Destiny’s biological mother was diagnosed with bipolar disorder. In response to the statements made by Destiny’s therapist, Taryn believed she had become too involved in the family and was unable to see things objectively. Taryn also stated A.J. has been diagnosed with ADHD and that he may have oppositional defiant disorder, for which medication had been prescribed. Taryn acknowledged Harmony had an eating disorder. She blamed Harmony and A.J.’s biological mother for Harmony’s food hoarding tendencies, claiming Amanda would do drugs instead of taking care of the children. Taryn acknowledged they made A.J. sleep on the couch in the living room for a few days because he ate candy in his room, which he was not supposed to do. Taryn denied making any statements about hating the children, though she did allow that she may have

made a comment that she hated the children's behaviors. According to Taryn, she majored in psychology and knew how detrimental those kinds of comments can be to a child.

A.J. also denied any abuse, including being made to do exercises, stating he would be grounded or sit in the corner if he misbehaved. He also stated he felt safe at home and that he liked his family. None of the children appeared to have any visible marks or bruises resulting from abuse. Harmony confirmed that the children have to go sit in the corner if they misbehave. She stated she bathes every day or every other day and she had never gone to bed without dinner.

An investigation by DCFS revealed a long history of prior referrals against Father and the children's biological mothers, some of which were substantiated. DCFS relied on statements made by Destiny, her therapist, and her TBS worker to recommend mental and developmental assessments of A.J. and Harmony for the purpose of coordinating treatment and services.

On December 21, 2012, DCFS received a message from the principal at A.J. and Harmony's school. She stated she had concerns that Father and Taryn were using food as a disciplinary action, including removing food and not allowing the children to eat. She further stated the children were hoarding food at the school. The case worker was unable to speak to the principal directly because the school was closed for winter break. Subsequently, the children were moved to a different service provider. Destiny's new therapist reported that she was working on creating a new chore system for Destiny and that Father was very receptive to it.

The Detention Hearing

At the December 28, 2012 detention hearing, the juvenile referee found a prima facie case had been made for detaining A.J. and Harmony because substantial danger existed to their physical or emotional health. They were ordered to remain with Father and DCFS was ordered to provide family maintenance services along with a multidisciplinary assessment of the children.

In the March 6, 2013 jurisdiction/disposition report, DCFS reported Father admitted he spanked A.J. and Destiny with an open hand, but 95 percent of the discipline was sending them to the corner. Taryn stated that A.J. was made to do jumping jacks to get any energy out prior to completing his homework; Ramos, Destiny's previous therapist, recommended the technique to her. In an interview in A.J.'s room, Destiny appeared tearful and afraid to the caseworker. The caseworker noticed a scratch and three black bruises on the inside of Destiny's upper arm. When asked about it, Destiny lowered her head and did not respond. However, she told a family friend, Laura L. that Taryn grabbed her, causing those bruises. Destiny acknowledged she might have hallucinated Taryn choking her. She stated, "I don't want to get in trouble. My mom and dad are telling me to say everything was a lie. The choking may have not happened but everything else did." Destiny also reported Taryn was mad about what Destiny told her therapist. Destiny wanted to go live with her grandmother, "the only place I feel loved and that someone will help me [when] I need help."

Destiny also related how Taryn had been "really mean" to A.J. and Harmony lately. If they got in trouble in the car, they had to put their hands under their knees and their heads in their lap. Destiny stated Taryn "told my sister Harmony to get out of the car and walk home. She is verbally mean to us. I get in trouble for not doing chores." DCFS reported that Destiny, A.J., and Harmony stayed with Mellissa Dray, Destiny's maternal aunt, over Thanksgiving break. During that time, Destiny told Dray that A.J. had a handprint bruise on his bottom. Dray, however, was not able to corroborate Destiny's statement as Father came every day to bathe A.J.

In an interview, Skye told the case worker A.J., Destiny, and Harmony were hit on their butts with a belt. A.J.'s teacher reported that Taryn seemed to be extremely strict with him, looking for reasons for him to have negative consequences for behaviors when things had already been handled at school. She acknowledged A.J. has a hard time taming his temper.

Destiny's new psychiatrist, Dr. Halbauer, increased Destiny's medication, indicating that she has a borderline personality disorder, swinging between psychotic episodes. He acknowledged that she can be extremely manipulative and wants to go live with grandmother, who does not require her to do anything. He did not have any concerns with regard to the parents.

DCFS also interviewed Laura L., a family friend who cared for Destiny's biological mother from the ages of 2-10. Destiny considers her a grandmother and refers to her as such. Laura L. complained to the case worker that Destiny lives in fear and that A.J. threw darts at Amanda's picture because he was convinced his mother is a bad person. Laura L. further asserted that Father and Taryn do not feed Harmony enough, contending that Harmony hoarded food at home but not during her visits to Laura L.'s home. Taryn explained that Harmony sometimes would eat until she vomited. As a result, they were forced to monitor her food intake. Laura L. also asserted the children were made to do one-armed, one-legged pushups and jumping jacks.

Father and Taryn provided DCFS with a letter from A.J. and Harmony's doctor, who found them to be healthy "and had no physical abnormality nor any signs of physical abuse." A.J. was diagnosed with attention deficit disorder with hyperactivity. Although not currently enrolled in therapy as of January 2013, he was placed on psychotropic medication. The children reported they wanted to live with their mom and dad, particularly A.J. In its report, DCFS concluded: "Based on the child's statements, statements by mental health providers and family's past referral history, the child is placed at high risk for future emotional abuse and neglect. Thus it is respectfully recommended that the court exercise jurisdiction and order the supervision of this family." DCFS nevertheless recommended the children remain with Father and Taryn.

DCFS provided an addendum report to the juvenile court on March 28, 2013. In a private interview on March 21, 2013, Harmony confirmed she was happy living with Taryn and Father and that she only got time-outs when she was in trouble. Harmony indicated Destiny attempted to coach her and A.J. into saying she was spanked with belts. DCFS also interviewed Jeffery Thompson, a former friend of Father's, after he called the

case worker to report that the children were terrified of Taryn. When he babysat for Father and Taryn two years ago, he observed Taryn making them lean their forehead against a wall from three feet away with their hands behind their back for 30 or 40 minutes. She would not let them stop even though Father tried to get her to stop. He stated he and Father were very close friends until Taryn came along.

In a May 20, 2013 report, A.J. and Harmony's new therapist stated A.J.'s goals in treatment included decreasing acting out behaviors on siblings and increase in following directions from caregivers on the first prompt. Harmony's goals were to decrease self harming behaviors like banging her head on the wall. The therapist also observed developmental delays in Harmony. She expressed no concerns in regard to the parents and believed they were practicing techniques from the Positive Parenting Program.

Adjudication/Disposition

Beginning April 24, 2013, the juvenile court held a joint adjudication and disposition hearing. The court received into evidence testimony and various exhibits, including documents from DCFS and psychological evaluations of the children. The juvenile court heard testimony from the family and their friends. Taryn denied any physical abuse, stating the children were given time-outs for bad behavior. She also denied making any disparaging comments to Destiny, including comparing Destiny to her biological mother, stating that the TBS worker and therapist were lying about those comments. Taryn also explained that Harmony would eat until she threw up and therefore, they were sometimes forced to control her eating. At the close of Taryn's testimony, the juvenile court admonished the parties not to discuss the case with the children and ordered the parties to come back after lunch for Destiny's testimony. The court ordered Destiny to shelter care for lunch, however, because it had "some pretty serious concerns" that its admonishment would be disregarded. The court later stated on the record that Taryn began to scream and cry after it ordered Destiny to shelter care for lunch.

In her testimony, Destiny admitted she lied to her therapist about the exercises she was made to do and lied about Taryn being mean to A.J. and Harmony because she wanted to live with her grandmother. She further testified she was never hit with a belt or punished inappropriately. However, she later testified she saw A.J. and Harmony do push-ups and that they would be forced to do them over again if they did them wrong. Destiny also was made to do jumping jacks, which lasted a long time and she would get tired. Destiny confirmed she felt the only place she was loved and received hugs was at her grandmother's. She complained that Skye was treated more favorably than the other children. She related how she did chores every day and had to repeat them if she did them wrong. Sometimes, she would still be doing the dishes while the rest of the family ate dinner. She further testified that Taryn was upset when she told her she would be just like her mother. However, she acknowledged Taryn told her positive things about herself as well.

Although she testified her parents told her to tell the truth in her testimony, Destiny also stated Taryn had told her some of the children could be removed, which upset her, because she still wanted to see her siblings. Taryn reminded her of this every time there was a hearing in this matter. Destiny testified she wanted services to continue in her home so "they can watch the family" and that she was nervous when the therapists left the home because "I don't know if, like, my parents overheard something that I said." She further admitted she "sometimes" felt scared when she was home and cried two to three times a week.

Thompson, with whom Father had had a falling out, testified he often stayed at Taryn and Father's home for days at a time when they were friends. He often babysat the children. He testified Father's discipline of the children changed when he met Taryn; the children were forced to stand with their forehead against the wall with their hands behind their back without bowing or flexing at all and remain in this position from ten to thirty minutes. At first, the children "would just throw a fit" if they were made to stand like this, "[b]ut after a while they would just stand there and take it, not a word." He also testified, the children "started being in fear of being in trouble[,]" relating a time when

Harmony “peed all over herself in fear” because he caught Harmony eating the dog food and was going to scold her. He also witnessed Father and Taryn slap the children on the “face, hands, butt” on more than one occasion. He recounted an instance in which Harmony failed to finish her cereal in the morning and was forced to try to eat it for lunch and dinner, even though it had been sitting in the milk all day.

Father and Taryn attempted to discredit Thompson by testifying they found the children in a kennel with their hands taped together the last time he babysat for them. Taryn, however, admitted she did not contact the authorities about this. They also introduced into evidence a photograph of Thompson holding a child wrapped in cellophane that was posted on Thompson’s MySpace page. Father admitted he continued to allow Thompson to babysit his children even after he was aware of the photograph.

Alicia W., a friend of the family, testified she often visited Taryn and Father and never observed them mistreating the children. In fact, Alicia trusted them with her own children. She further testified that Destiny told her she lied about Taryn to the case worker.

In his testimony, Father denied any abuse and denied that Taryn verbally abused the children. He further testified the children were treated differently due to their age and ability. Therefore, Destiny had more chores than the younger children. However, he admitted he allowed A.J. to throw darts at a picture A.J. had drawn of his mother; Father thought it would be a good way for A.J. to release his anxiety or anger towards her. He also admitted he had disagreements with Taryn which resulted in him leaving the house with the children. Father testified that anyone who provided contradictory statements was lying, including Destiny, who he claimed had a history of lying. He related an incident when Destiny told her teacher Father hit her in the stomach because she wanted to live with her grandmother. Destiny later admitted she lied about it. He also accused Thompson, Laura L., Ramos, Phillips, and Amanda of lying.

After the parties submitted their closing briefs, the juvenile court issued its ruling on May 30, 2013. The juvenile court sustained the section 300 petition allegations as presented above. Destiny was ordered removed from Father’s custody and placed with

Laura L., A.J. and Harmony were ordered to be “suitably placed” by DCFS.⁴ Father and Taryn were allowed monitored visits at the DCFS offices. All parties were ordered to counseling, both individually and jointly. As to Skye, the juvenile court dismissed the petition, finding she was the favored child and not at risk of harm.

In making its decision, the juvenile court found Taryn’s testimony to be “incredibly evasive” from which it could not draw “a positive inference[.]” The juvenile court further noted it observed Taryn “signaling A.J. from the witness stand.” It also noted that it was initially skeptical about the therapist’s statement that Taryn said Destiny made her skin crawl and that she hated Destiny. The juvenile court “was pretty surprised that somebody would make these kind of statements with a professional therapist in the home. [¶] But when we came to adjudication and I ordered that Destiny go down and eat lunch in shelter care before her testimony, [Taryn] basically had a meltdown and was screaming and crying and carrying on in a very surprising fashion here in the courtroom. [¶] And when I observed her doing this, my mind flashed to this argument, and I thought her very—her behavior here in court was very consistent with what Ms Phillips had described.”

The juvenile court also believed the evidence showed the children “felt they had to say the right things, and that they were aware that the parents were nearby.” The juvenile court discounted Dr. Halbauer’s statements, which included “a lot of negative things . . . about Destiny and a lot of praise for the parents[.]” because “he didn’t really have as much time, if any, in the home, and his contact with the family was much more limited [than Ramos, the previous therapist].” The juvenile court indicated it believed Laura L.’s testimony that Harmony’s eating disorder was eliminated when she visited. The court found that both Destiny and A.J. had bruises, and Destiny stated her bruising was caused by Taryn grabbing her. Although A.J. and Destiny testified there was no abuse, the juvenile court appeared to disbelieve that testimony, observing there was “incredible pressure on [Destiny] to exonerate the stepmother and the father.” In

⁴ They were later placed with Laura L. as well.

particular, the court found Destiny's appearance to be haggard and stressed, her demeanor "almost robot-like."

The juvenile court also believed Thompson's testimony, despite his apparent bias, because it corroborated statements made by the therapist that Taryn told Destiny she hated her. Thompson also observed all the children being slapped. In short, the juvenile court found significant that witnesses, who did not know one another, two of whom were professionals, were "all describing similar behaviors." As to A.J., the juvenile court believed he was hit with a belt and slapped and that excessive exercise can be abusive because he was crying. Father appealed the juvenile court's rulings and findings.

DISCUSSION

Father concedes there is sufficient evidence to support Destiny's removal from his custody. His appeal only concerns the juvenile court's jurisdictional findings and dispositional order relating to A.J. and Harmony. Father argues the record lacks substantial evidence to show they were ever seriously harmed or were at a substantial risk of being seriously harmed: A.J. and Harmony never disclosed any abuse, did not express fear of their parents, and did not have any visible marks or scars. We find substantial evidence supports the findings and orders relating to A.J. and Harmony.

I. Standard of Review

This appeal is governed by the substantial evidence standard of review. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361.) That is, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order, and affirm the order even if there is other evidence that would support a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) " " "The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact."

[Citation.]’ [Citation.]” (*In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1487, disapproved on another point in *In re Horton* (1991) 54 Cal.3d 82, 92-93.)

Further, at a dispositional hearing the court “must undertake ‘a judicious appraisal of all available evidence bearing on the child’s best interests’ including an evaluation of the relative merits of alternative custody awards. [Citation.]” (*In re B. G.* (1974) 11 Cal.3d 679, 693.) Before the court may order a child physically removed from his or her parents, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The standard of review of a dispositional order on appeal is the substantial evidence test, “bearing in mind the heightened burden of proof.” (*In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1654; *In re R.V.* (2012) 208 Cal.App.4th 837, 849.) The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

II. Substantial Evidence Supports the Juvenile Court’s Findings

The juvenile court declared A.J. and Harmony dependent children within the meaning of subdivisions (a) and (b) of section 300. Under these subdivisions, the juvenile court has jurisdiction to declare a minor its dependent child if it finds:

“(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

“(b)(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.” (§ 300, subds. (a) & (b)(1).)

We agree with Father that substantial evidence supports the juvenile court’s jurisdictional findings about Destiny. Contrary to Father’s assertions, however, the evidence of Destiny’s abuse cannot be divorced from the proceedings related to A.J. and Harmony. This is because subdivision (a) provides that the juvenile court may take jurisdiction if it finds a substantial risk of serious future harm based on a history of repeated inflictions of injuries on the child or *the child’s sibling*. (§ 300, subd. (a).) Here, Father does not contest the findings made by the juvenile court as to Destiny. The record shows that Destiny told her therapist that Taryn choked her and hit her. The abuse only stopped when Destiny began to receive services. Thus, Destiny became nervous when services were set to end and there would be no one to look in on the family. Destiny also consistently described how she was forced to do military style drills for punishment for a “long time” until she was tired. Destiny told Laura L. that Taryn caused bruising and a scratch on her arm when she grabbed it.

The evidence supporting Destiny’s petition also supports A.J. and Harmony’s. This is particularly true when Taryn has stated she hates all the children’s biological mothers, indicating her animosity may not be limited to Destiny. Moreover, there is ample evidence that Taryn only treats Skye well, not any of the other children. The TBS worker heard Taryn say she believed A.J. was following in Destiny’s footsteps. If so, it is reasonable to conclude A.J. would receive the same treatment as Destiny in the future.

We need not rely solely on the evidence supporting the abuse allegations relating to Destiny, however. The record also contains evidence of abuse against Harmony and A.J. Although it noted his apparent bias against Father and Taryn, the juvenile court credited Thompson's testimony that the children were slapped on their "face, hands, butt" and forced to stand with their forehead against the wall. Skye corroborated Thompson's statements of physical abuse when she told the case worker that the other children were hit with a belt.

Destiny further described how the children were forced to put their hands under their knees and their heads in their lap for the duration of a car ride if they misbehaved. Taryn once threatened Harmony to get out of the car and walk home. According to Destiny, these events occurred while the proceedings in this case were ongoing. Although Destiny admitted she lied at the dispositional hearing, the juvenile court expressly disbelieved this testimony, finding Destiny was pressured to exonerate Father and Taryn.

AJ told the therapist he was made to do military-style exercises as punishment. This was corroborated by Destiny, who stated A.J. was forced to continue exercising even though he was crying. Further, Harmony was diagnosed with an eating disorder; it was uncontested that she tended to hoard food. The principal at her school was sufficiently concerned about Father and Taryn using food as a disciplinary method during the school's winter break in 2012 that she reported it to DCFS. Laura L. noted Harmony's food hoarding tendencies only occurred at home, and not when she visited Laura L.'s home. Coupled with the allegations regarding Destiny's abuse, this constitutes substantial evidence to support the juvenile court's jurisdictional findings.

Father contends there was no substantial evidence of serious physical harm to warrant these findings, particularly since spanking and exercise, without evidence of serious physical injury, cannot constitute abuse. He argues that mere spanking is not enough to constitute "serious physical harm" under section 300. In fact, section 300, subdivision (a) expressly excludes "reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury" from the definition of

serious physical harm. The argument is wholly unsound. The evidence shows the children were not merely spanked. Skye told the caseworker that the children were hit with a belt, which goes beyond spanking and is not an appropriate form of discipline. “[H]itting with a belt . . . crossed the line over into abuse.” (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 291; see also *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438-439.) Moreover, there was evidence the children were forced to stand with their foreheads pressing against the wall and that they were slapped on the face and hands as well as the buttocks. Further, Destiny exhibited bruising and scratching on her arm after Taryn grabbed her.

This matter is distinguishable from the cases relied upon by Father. In *In re Joel H.* (1993) 19 Cal.App.4th 1185, there was no evidence the child was hit with a belt or any other object. Instead, the record established nothing more than the child had been spanked with a hand to his bottom and he was shaken a couple of times to get his attention. There was no evidence these acts resulted in actual physical harm or posed a danger to the child. (*Id.* at pp. 1201-1202.)

In *Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 75 (*Gonzalez*), the mother was reported for child abuse after she spanked her 12-year-old daughter using a wooden spoon with enough force to produce visible bruises. *Gonzalez* addressed the propriety of recording mother as a probable child abuser pursuant to the Child Abuse and Neglect Reporting Act (CANRA), Penal Code sections 11164 through 11174.3. The *Gonzalez* court held that “a genuine disciplinary intention can furnish a bar to a finding of child abuse under CANRA when the circumstances present a reasonable occasion for discipline and the discipline imposed is reasonable in kind and measure.” (*Gonzalez*, at p. 91.) The court concluded, “We cannot say that the use of a wooden spoon to administer a spanking necessarily exceeds the bounds of reasonable parental discipline.” (*Id.* at p. 92.) *Gonzalez* did not mention section 300, much less apply it. The court’s conclusion about hitting a child with a spoon, therefore, does not apply to this matter. In any case, the abuse consisted of more than just a spanking with a wooden spoon.

Father also contends there was no substantial evidence to support the conclusion the use of exercise as a method of discipline caused serious physical injury under section 300, relying on a criminal case from Ohio, *State v. Bennett* (Ohio Ct.App. 2013) 2013-Ohio-5524, 2013 Ohio App. LEXIS 5770. We need provide no further description to distinguish *Bennett*. Nevertheless, we need not determine if military-style exercise, by itself, constitutes serious physical harm under section 300. The record amply shows other forms of punishment, described above, used by Taryn.

Father, however, continues to contend there was no evidence of serious physical harm to support the jurisdictional findings because neither A.J. nor Harmony had any bruising or other injury. Father equates serious physical harm with that found in *In re N.M.* (2011) 197 Cal.App.4th 159, where an 11-year-old was hit with an iron pipe, a broom, and other things which left her bleeding and bruised. Father argues, “*N.M.* demonstrates the severity of injury generally required to uphold a subdivision (a) finding.” Not so. *In re N.M.* does not establish the minimum injuries a child must exhibit before he can be said to have suffered serious physical harm under section 300, subdivision (a).

Instead, subdivision (a) clearly permits a juvenile court to take jurisdiction where “there is substantial risk that the child will suffer[] serious physical harm” (§ 300, subd. (a).) As discussed above, a finding of substantial risk of serious future injury may be based on injuries inflicted on a sibling. Father argues, however, there is no risk of future harm because “[t]he concerns which had initiated the Department’s intervention had been neutralized.” Father contends there was no substantial evidence of a current risk of harm to the children by the time of the jurisdictional and dispositional hearing because Taryn and Father were attending parenting classes to learn relationship building skills and calm use of time-outs. Moreover, Taryn indicated she would never use exercise again as a form of discipline.

However, Father and Taryn continue to deny they abused Destiny, A.J., or Harmony and have never expressed regret over their actions. Instead, they pressured the children to exonerate them during the contested hearing. Further, the record

demonstrates that Father and Taryn were well aware of the use of time-outs as a discipline method prior to this parenting class. Indeed, Taryn made clear she majored in psychology in college and understood the detriment words can have on a child. Yet, she continued to belittle Destiny, even in front of the TBS worker.

We find substantial evidence supports the juvenile court's findings under subdivision (a) of section 300. The same evidence supports the findings as to subdivision (b).

III. Removal Order

Section 361, subdivision (c) provides that a dependent child may not be taken from the physical custody of the parent with whom the child resides at the time the petition is initiated unless the juvenile court finds by clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).)

Father argues substantial evidence did not exist to support removal of A.J. and Harmony from his home, even if there was sufficient evidence to support the jurisdictional findings. Father again relies on the argument that A.J. and Harmony were never seriously injured and that he and Taryn have learned new methods of discipline. He contends “DCFS supervision and family maintenance for six months would be sufficient to ensure the parents employed proper discipline methods.” Father asserts, “The Department now was involved in this family. Any potential for abuse would not go undetected.” We disagree.

As discussed in detail above, it was reasonable for the juvenile court to conclude the abuse would continue given the animosity Taryn has shown to the children, despite her understanding of the detriment caused by disparaging words. Contrary to Father’s assertions, involvement with DCFS does not guarantee the children’s safety. Much of the conduct supporting the petition occurred while DCFS was providing services. Coupled

with their continued denial that any abuse happened or that corporal punishment may be abusive, there was substantial evidence to remove A.J. and Harmony from the home.

In re Jasmine G., *supra*, 82 Cal.App.4th 282, is instructive on these points. There, the court stated, “The case before us is remarkable for the clear and convincing evidence that it *was* safe to return Jasmine to either of her parent’s homes. Both parents had forsworn corporal punishment of teenagers. Both expressed remorse for having used corporal punishment on Jasmine. Both had attended parenting classes, and both had undergone therapy to improve their parenting skills. Jasmine had no fear of either. One therapist opined it was totally safe to return the child and the other simply had ‘no recommendation’ (in a context where it was not at all clear that she her ‘hesitancy’ went to Jasmine’s physical safety, as distinct from what was merely optimum). Jasmine herself wanted to go home.” (*Id.* at pp. 288-289.) Here, A.J. and Harmony are nine and six years old, not teenagers. Not only have Taryn and Father expressed no remorse, they continue to assert that corporal punishment is not abuse and their actions were not abusive.

The other cases relied upon by Father are distinguishable in that there was no specific, defined risk of future harm to the children. (*In re James T.* (1987) 190 Cal.App.3d 58, 65 [16-year-old expressed the doubts, dissatisfaction, and confusion echoed universally by adolescents, not extreme emotion distress]; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 527 [mother’s “narcissism” did not pose risk to children after unsanitary home had been cleaned].) That is not the case here.

DISPOSITION

The challenged jurisdictional findings and dispositional order are affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

GRIMES, J.